

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.3950 OF 2006.

Mhalsakant @ Shamkaka Sakharam Peshawe ..Petitioner.
V/s
Special Land Acquisition Officer
No.21 Pune and others ..Respondents

Shri S.V. Sadavarte for petitioner
Shri C.R. Sonawane, AGP for respondent Nos. 1,2 and 5
Ms. Deepa Chavan i/b M/s Little & Co. for respondent
Nos. 3 and 4.

**CORAM : B.H. MARLAPALLE &
J.H. BHATIA, JJ.**

DATE : 15TH NOVEMBER, 2006.

P.C.

1. We have heard Mr. Sadavarte, the learned Counsel for the petitioner, and we have perused the affidavit- in- reply filed by respondent Nos. 3 and 4. Mr. Sonawane, the learned AGP appears for respondent Nos.1, 2 and 5 and he has placed before us the original record.

2. This petition is in the second round after Writ Petition No. 736/1997 was dismissed by this Court. A

Notification dated 12/8/1982 was issued under section 32(2) of the Maharashtra Industrial Development Act, 1961 (the Act for short) by the State Government for acquisition of 12 Hectors and 86 Ares land located in Gut No.389/A of village Jejuri and from the ownership of the petitioner. On the representation made by the petitioner, the State Government was pleased to issue an order on 11/5/1983 accepting his request for deletion of 5 Hectors land from the original land of 12 hectors and 86 Ares. Consequently, on 2/6/1983 a Notification under Section 32(1) of the Act was published in the Government Gazette for acquisition of 7 H and 86 R of lands from Gut No.389/A and in view of the scheme of section 32(4), the land thus, remained vested absolutely with the State Government from 2/6/1983 and the Government was entitled to obtain the possession of the said land at any time. Notices were issued to the petitioner for possession of the land admeasuring 7 H and 86 R on 9/12/1985 but the petitioner refused to deliver the possession. Finally, the State Government took the possession by drawing a possession panchanama on 22/1/1986 and the entire land admeasuring 7 H and 86 R was handed over to the MIDC i.e. respondent Nos. 3 and 4. Undoubtedly, under the scheme of Section 32(4) the State Government retains the

power of withdrawing from the acquisition before the possession was obtained from the owner but in the instant case, such a power was not available for withdrawal from the acquisition.

3. Eleven years later the petitioner approached this Court in Writ Petition No.736/1997, which came to be dismissed on 5/10/1999 for being without substance as well as hopelessly belated. That order was challenged in the SLP (Civil) St. No. 18263/1999 and the same was dismissed as withdrawn on 16/12/1999. The petitioner had sought leave to withdraw the Special Leave Petition to presume any other remedy available to him and the Supreme Court granted liberty to the petitioner to pursue any other remedy and the SLP was dismissed as withdrawn. However, the petitioner claimed that he submitted a representation to the State Government immediately after the SLP was dismissed and requested for return of the land. This request was entertained and the Hon'ble Minister for Industries, State of Maharashtra passed an order on 30/9/2003 and accepted the request for deletion of petitioner's land. It appears subsequently, by the letter dated 16/1/2004 the Executive Officer from the MIDC sought to having

compliance report on the order passed by the Minister. Thus, the petition in the second round is based on the order dated 30/9/2003 passed by the Minister for Industries.

4. Mr. Sonawane, the learned AGP has placed before us from the original record the copy of the panchanama dated 22/1/1986 and it seems that under Section 32(6) of the Act, the possession was taken over of the subject land and the panchanama has been signed by the concerned 5 witnesses present on the spot.

5. Proviso below 32(4) of the Act operates before the possession of the land under acquisition was taken over and in the instant case, the possession was taken over on 22/4/1986. Therefore, the land stood transferred to the Corporation under sub-section (7) of the said Section 32. The 7 X 12 extracts placed before us also show that entry No.4543 has been mutated in favour of respondent Nos. 3 and 4 i.e. Maharashtra Industrial Development Corporation for 7 H and 86 R lands, whereas, for the remaining land out of 12 hectars 86 R, the ownership is shown that of the petitioner in the said 7 X 12 extract. Mr. Sadavarte, the learned

Counsel for the petitioner has referred to the scheme of Section 39(2)(a), 42(A) (4) and 56 of the Act. We have no doubt in our mind, that none of the said provisions are for return of land. Section 39 is regarding disposal of land by sale, section 42(A) is in respect of any utilisation of the surplus land and section 56 is regarding withdrawal of area or estate or part thereof. None of these provisions contemplate the return of land to the original land holder except by way of sale by the Corporation. Section 32(7) states that where the land has been acquired for the Corporation, any local authority, the State Government shall, after taken possession thereof, by Notification published in the official Gazette, transfer the land to the Corporation or that local authority, as the case may be, for the purposes for which it was acquired and the provisions of Section 43 and 1(A) shall apply to any land so transferred. Section 43-1A of the Act, reads as under:-

"(1) For the furtherance of the objects of this Act, the State Government may by notification published in the Official Gazette, upon such conditions as may be agreed upon between that Government and the Corporation, place at the disposal of the Corporation any lands vested in the State Government.

(2) After any such land has been developed by, or under the control and supervision of, the Corporation, it shall be dealt with by the Corporation in accordance with the regulations made, and directions given by the State Government in this behalf.

(3) If any land placed at the disposal of the Corporation under sub-section (1) is required at any time thereafter by the State Government, the Corporation shall replace it at the disposal of the State Government upon such terms and conditions as may be mutually agreed upon."

None of these provisions provide for return of land to the original owner and therefore, it is evident that when the Hon'ble Minister for Industries passed an order on 23/9/2003 in favour of the petitioner, the provisions of the Act and more particularly these referred to hereinabove were not brought to his attention. At the same time, we do not accept the contentions of the petitioner that an order passed by the Minister on 23/9/2003 is a Government Resolution. Undoubtedly, the order of the Minister is without jurisdiction and therefore, cannot be relied upon to seek a writ of Mandamus from this Court. The return of land once it had vested with the Corporation will have to be governed strictly as per the provisions of the Act and not as per the orders of the Ministers, if such orders do not meet the requirements of the law.

6. Hence, this petition fails and the same is hereby rejected summarily.

7. Mr. Sadavarte made an oral application for continuing ad interim order. This application is rejected moreso, when the petitioner is not in possession of the land at present and the acquisition proceedings were concluded about twenty years ago.

(J.H. BHATIA, J.)

(B.H. MARLAPALLE, J.)